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WAR FOOD ADMINISTRATION
OFFICE OF DISTRIBUTION
Washington 25, D. C.

2548

SUMMARIES OF DECISIONS BY THE WAR FOOD ADMINISTRATOR
on complaints filed under
THE PERISHABLE AGRICULTURAL COMMODITIES ACT

Number 273

August 22, 1944

S-3123; July 22, 1944, Docket 4361: (Hearing)

In re: APPLICATION OF HARRY T. SILVERFARB, WASHINGTON, D. C., FOR A
LICENSE UNDER THE PERISHABLE AGRICULTURAL COMMODITIES ACT

Principal points involved: Responsibility for violations
for which two licenses were revoked and failure to pay
reparation award warranted denial of license; engaging
in business without a license and attempts to obtain one
under false pretenses showed unfitness to be licensed;
filing of application for license does not authorize
operation of business as licensee.

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Order: Application denied; publication of facts.

Outline of facts
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On May 15, 1944, a complaint was instituted by the Office of Distribution, alleging that Harry T. Silverfarb, who on April 24, 1944 applied for a license for himself to operate as Harry T. Silverfarb Company, was not entitled to one because (1) he was responsible for violations of the Act for which two licenses had been revoked, (2) he had failed to pay a reparation award entered against him, and (3) he had violated the Act by doing business without a license. A hearing was held May 17, 1944.

The facts developed were as follow:

1. By order dated March 15, 1933, in disciplinary proceedings under the Act, the license of H. T. Silverfarb Co., Inc., of which Harry T. Silverfarb was manager and owner and for whose acts he was responsible, was revoked for failure to pay two consignors.

2. By order dated Oct. 12, 1942, Harry T. Silverfarb was ordered to pay reparation of \$469.73, plus interest, to a complainant under the Act, no part of which has been paid.

3. By order dated October 12, 1942, in disciplinary proceedings, the license of Harry T. Silverfarb, doing business as Harry T. Silverfarb Co., was revoked for failure to pay for three interstate shipments of vegetables.

4. From about September 1943 to February 1944 applicant engaged with Sam Polansky in Washington, D. C. in the business of receiving produce from shippers for sale on commission. Although some of the transactions were in Polansky's name, applicant distributed to shippers cards containing his name, address and telephone numbers, not mentioning Polansky's name or address.

5. On April 6, 1944, application was filed for license for M. Leonard Silverfarb Produce Distributing Co., Washington, D. C., to be managed by Harry T. Silverfarb, and on April 18, 1944 application was filed for license for Helen May Smith Co., Washington, to be managed by James A. Lewis. Neither license was granted, but Harry T. Silverfarb, allegedly acting in the names of these applicants, engaged in the business of receiving produce from shippers in New York, Maryland, and other States, without a license under the Act. In connection with the second of these applications, Harry T. Silverfarb claimed he was operating the business under a power of attorney from Helen May Smith, a white woman who put up all the money and applied for a license. However, Helen May Smith testified that she is a colored maid who cleaned his apartment and signed the power of attorney and application for license at Silverfarb's request without knowing what she was signing. She also testified she invested no money with him and had no intention of entering the produce business.

Rulings included in decision

1. Not only did the applicant's responsibility for violations of the Act for which two licenses were revoked and his failure to pay the reparation award warrant denial of a license under paragraph (b) of section 4 of the Act but his engaging in business without a license and his attempts to obtain one under false pretenses showed that he is no fit person to be licensed to represent absent shippers.

2. Applicant's contention that filing an application authorizes one to operate as a licensee was not well taken because the Act specifically provides that no person shall carry on a produce business without a license "valid and effective at such time" and also requires a hearing on an application within a specified period if a license is not issued forthwith. The early hearing requirement, designed to prevent keeping an applicant out of business by mere inaction, would not be necessary if the application itself authorized operation.

3. The application for license was denied, it being held that an application for license for Harry T. Silverfarb, in his own name or any other name should be denied. The facts and circumstances were ordered published.

S-3124, July 31, 1944, Docket 4282: (Hearing)

JUSTIAN-FELDBAUM, INC., PHILADELPHIA, PA. v. NATHAN LITWAK, EASTON, PA.

Violation charged; Failure to pay the full purchase price of a carload of grapes.

B - 3 Principal point involved: Agent's representation of respondent

on Philadelphia market for ten years was sufficient to show apparent authority upon which complainant relied.

Order: Complainant awarded \$790.26, plus interest; publication of facts.

Outline of facts

On Oct. 22, 1942, complainant sold to respondent a carload of 646 lugs of Alicante type and 527 lugs of Muscat type juice grapes, rolling from Cumberland, Md. The car arrived at the freight yard of the Central R.R. of N. J., Easton, Pa., at 5:00 A. M. Saturday, Oct. 24, and was inspected and rejected by respondent at 4:00 P.M. Tuesday, Oct. 27, and was accepted by respondent at 10:00 A. M. Wednesday, Oct. 28. Complainant claimed that the sale was rolling acceptance final, at \$1.42½ per crate f.o.b. Philadelphia, Pa., or for \$1090.26 after the deduction of \$581.26 freight to Philadelphia; and that on Oct. 28 because the quantity was too great for respondent to handle complainant accepted from respondent 300 crates of the grapes and sold them for \$300, which was credited to respondent's account. Complainant asked for an award for the balance of \$790.26. Complainant's version of the sale was corroborated by the testimony of its sales manager who negotiated the transaction.

Respondent denied the contract and request that complainant take some of the grapes as the quantity was too great for him to handle, as alleged by complainant. He claimed the purchase was made by his agent subject to inspection upon delivery at Easton; that the grapes were in a moldy and spoiled condition upon arrival; that respondent phoned complainant on Oct. 27 that he would not accept because they were not as represented by complainant; that complainant asked that 300 crates be sent for sale at Philadelphia and it was agreed that respondent would endeavor to sell the balance, for which respondent realized the best price obtainable, \$883.65, still being held by respondent; and that, upon advice of his counsel, he paid the freight, after the telephone conversation with complainant, to protect the freight agent from reprimand or loss of employment since the freight should have been paid when the door of the car was opened. Respondent's agent who acted for him in this transaction testified in his behalf.

Rulings included in decision

1. Complainant's contention that the sale was "f.o.b. rolling acceptance final" and that arrangements were made for the sale of 300 crates of the grapes for respondent's account was sustained by the evidence. The testimony of complainant's witness was sufficient to establish the prima facie case set out in the complaint. On respondent was the burden of meeting complainant's proof with sufficient rebuttal to leave complainant's case short of that preponderance necessary to support a finding in its favor. Respondent's proof as to the terms of the agreement was limited to the testimony of its purchasing agent who alone represented him in the transaction. His testimony was complicated by answers not responsive to the questions and also by confusing and ambiguous statements, and it was contradicted in several instances by other testimony for the respondent. His evidence was so unreliable as to be entitled to little weight.

2. Respondent's failure to pay the total purchase price constituted a violation of section 2 of the Act. Although respondent contended and offered testimony showing that his agent was without authority to purchase the car of grapes "rolling acceptance," the evidence of the agent's representation of the respondent in the Philadelphia market for a period of 10 years was sufficient to show apparent authority upon which the complainant reasonably relied. Complainant was awarded \$790.26 plus interest.

